Pilecon Engineering Bhd v Remaja Jaya Sdn Bhd

HIGH COURT (KUALA LUMPUR) — COMPANIES WINDING-UP NO D5-28-20-1991
KAMALANATHAN RATNAM JC
28 AUGUST 1996

Companies and Corporations — *Winding up — Petition — Discretion of court to wind up company — Factors to be taken into account when court orders winding up — Breach of undertaking by receivers and managers — Interest of other creditors prejudiced if court were to grant order to wind up — Whether court should order winding up of company — Companies Act 1965 ss 218 & 221*

Companies and Corporations — *Winding up — Opposition to petition — Discretion of court to wind up company — Factors to be taken into account when court orders winding up — Breach of undertaking by receivers and managers — Interest of other creditors prejudiced if court were to grant order to wind up — Whether court should order winding up of company — Companies Act 1965 ss 218 & 221*

The petitioner brought a winding-up petition against the respondent pursuant to s 218 of the Companies Act 1965 ('the Act') on the ground that the respondent was unable to pay its judgment debt. The respondent was a housing developer and was placed under receivership. On the date of appointment of the receivers and managers, the respondent was involved in a housing project. The petitioner argued that they had the statutory right for winding up under s 218 of the Act to enforce the judgment and that till that date the respondent had failed to rebut the presumption under s 218(1)(e) of the Act that it was unable to pay its debts. The winding-up order was opposed by other creditors. The petitioner also argued that the receivers and managers had failed to complete the project within a 21-month period as promised. It was also pointed out they had also previously undertaken and yet failed to complete the project by June 1995 during a hearing of a petition of winding up, which the judge stayed on merit.

Held, staying the petition for a year:

(1) The use of the permissive 'may' in ss 218 and 221 of the Act, rather than the mandatory 'must', gave the court a discretion whether or not to wind up a company (see p 812H); *Re Crigglestone Coal Co Ltd* [1906] Ch D 327 and *Krextile Holdings Pty Ltd v Widdows* [1974] VR 689 followed.

(2) Although the petitioner had a prima facie right to an order to wind up, the court should consider both the interest of the creditors and the public at large in deciding whether to wind up the company. The court, being invested with a wide discretion, would also look into all aspects including the commercial viability of allowing the company to continue to function. In the present case, other creditors including the house buyers had opposed the petition. The company had no other assets. Nothing could be gained by granting the order, whereas one final chance ought to

A be given to the receivers and managers to fulfill their obligations (see p 813A–C); *Re Crigglestone Coal Co Ltd* [1906] Ch D 327 and *Krextile Holdings Pty Ltd v Widdows* [1974] VR 689 followed.

(3) Even if there were in fact three breaches of undertaking by the receivers and managers as suggested by the petitioner, these lent B weight to the former's attempt to try and complete the project in spite of delays. In any event, as the project was nearing completion and was in its final stage, the receivers and managers should be given one final attempt to complete the project, failing which the company ought to be wound up (see p 815F–G); *Kim Wah Theatre Sdn Bhd v Fahlum Developer Sdn Bhd* [1990] 2 MLJ 511 C followed.

(4) The petititoner had not suggested that if the respondent were wound up, it would make some recovery. However, it was apparent that if an order to wind up were made, both the debenture holder and the house buyers would be prejudiced. D The court had to accede to the wishes of the majority (see pp 816H and 817F).

[Bahasa Malaysia summary

Pempetisyen telah memulakan suatu petisyen penggulungan terhadap penentang mengikut s 218 Akta Syarikat 1965 ('Akta tersebut') atas E alasan bahawa penentang tidak dapat menjelaskan hutang penghakimannya. Penentang merupakan pemaju perumahan dan diletakkan di bawah penerimaan. Pada tarikh pelantikan penerima dan pengurus, penentang terlibat dalam sebuah projek perumahan. Pempetisyen berhujah bahawa mereka mempunyai hak statutori untuk F penggulungan di bawah s 218 Akta tersebut bagi menguatkuasakan penghakiman dan bahawa sehingga tarikh itu penentang telah gagal mematahkan anggapan di bawah s 218(1)(e) Akta tersebut bahawa ia tidak dapat menjelaskan hutangnya. Perintah penggulungan telah ditentang oleh si piutang lain. Pempetisyen juga berhujah bahawa penerima dan pengurus telah gagal menyiapkan projek itu dalam G tempoh 21 bulan seperti yang telah dijanjikan. Ia juga telah dihujahkan mereka telah berjanji dan namun begitu gagal menyiapkan projek itu pada bulan Jun 1995 semasa pembicaraan petisyen penggulungan, yang telah digantung oleh hakim atas merit.

H **Diputuskan**, menggantung petisyen selama setahun:

(1) Penggunaan 'boleh' yang permisif dalam ss 218 dan 221 Akta tersebut, berbanding dengan 'mesti' yang mandatori, memberikan mahkamah budi bicara sama ada untuk menggulung sesebuah syarikat (lihat ms 812H); *Re Crigglestone Coal Co Ltd* [1906] I Ch D327 dan *Krextile Holdings Pty Ltd v Widdows* [1974] VR 689 diikut.

(2) Walaupun pempetisyen mempunyai suatu hak prima facie kepada perintah untuk menggulung, mahkamah harus mempertimbangkan kedua-dua kepentingan si piutang dan masyarakat awam dalam menentukan sama ada untuk menggulung syarikat berkenaan.

Mahkamah, yang dianugerahkan dengan budi bicara yang luas, juga akan meneliti kesemua aspek termasuk daya maju komersial dalam membenarkan syarikat terus berfungsi. Dalam kes ini, si piutang lain termasuk pembeli rumah telah menentang petisyen itu. Syarikat itu tidak mempunyai aset lain. Tiada apa yang akan diperolehi daripada memberikan perintah, manakala suatu peluang akhir patut diberikan kepada penerima dan pengurus untuk memenuhi kewajipan mereka (lihat ms 813A–C); *Re Crigglestone Coal Co Ltd* [1906] Ch D 327 dan *Krextile Holdings Pty Ltd v Widdows* [1974] VR 689 diikut.

(3) Jika pun pada hakikatnya terdapat tiga kemungkiran akujanji oleh penerima dan pengurus sebagaimana yang dicadangkan oleh pempetisyen, ini menyokong percubaan penerima untuk menyiapkan projek itu meskipun adanya kelewatan. Walau bagaimanapun, oleh kerana projek itu hampir selesai dan berada dalam tahap akhir, penerima dan pengurus harus diberi suatu peluang akhir untuk menyiapkan projek itu, dan jika gagal berbuat demikian syarikat itu patut digulung (lihat ms 815F–G); *Kim Wah Theatre Sdn Bhd v Fahlum Developer Sdn Bhd* [1990] 2 MLJ 511 diikut.

(4) Pempetisyen tidak mencadangkan bahawa jika penentang digulung, ia akan membuat dapatan kembali. Namun demikian, adalah nyata bahawa jika suatu perintah untuk menggulung dibuat, ia akan memudaratkan kedua-dua pemegang debentur dan pembeli rumah. Mahkamah harus bersetuju kepada hasrat majoriti (lihat ms 816H dan 817F).]

Notes

For cases on winding up of a company, see 3 *Mallal's Digest* (4th Ed, 1994 Reissue) paras 399–570.

Cases referred to

Crigglestone Coal Co Ltd, Re [1906] 2 Ch D 327 (folld)
Hotel Royal Ltd Bhd v Tina Travel Agencies Sdn Bhd [1990] 1 MLJ 21 (refd)
Kim Wah Theatre Sdn Bhd v Fahlum Developer Sdn Bhd [1990] 1 MSCLC 90; [1990] 2 MLJ 511 (folld)
Krextile Holdings Pty Ltd v Widdows [1974] VR 689 (folld)

Legislation referred to

Companies Act 1965 ss 182(1)(d), 190, 218, 218(1)(e)

Edwin Lim (*Lim Kean Siew & Co*) for the petitioner.
Gideon Tan (*Lee Hishammuddin*) for the receivers and managers.

Kamalanathan Ratnam JC: The petitioner brought this winding-up petition against the respondent pursuant to s 218 of the Companies Act 1965 ('the Act') on the ground that the respondent was unable to pay its debt. The petitioner had obtained judgment against the respondent on 11 January 1990 for RM84,883.54. The respondent was placed under

receivership on 23 April 1990. The receivers and managers ('the RM') appointed by the debenture holder on 15 January 1991 opposed this petition. The defendant was a housing developer; and at the date of appointment of the RM, the defendant was involved in the development of a housing project known as 'Taman Wilayah Selayang' ('the project'). The project was the only development project carried out by the defendant. The RM conducted a study of the project and concluded, as stated in para 8 of encl 9 being the affidavit of one of the partners of the RM, inter alia, that:

(a) if completed, the project is expected to generate a surplus of RM10.437m after accounting for construction and related expenses;

(b) to bring the project to completion, additional financing in the sum of approximately RM6.7m is required.

(c) if would take approximately another 21 months to complete the project.

The petitioner based this petition on the following grounds:

The petitioner's statutory right to present the petition

It was argued that the right to petition for winding up was a right conferred by the statute — that is, s 218 of the Act — and that the petitioner/judgment creditor ought to be allowed to enforce the judgment and that to date, the respondent had failed to rebut the presumption under s 218(1)(e) of the Act that it was unable to pay its debt. The petitioner relied on *Hotel Royal Ltd Bhd v Tina Travel Agencies Sdn Bhd* [1990] 1 MLJ 21, which defined 'unable to pay its debt' as insolvency in the commercial sense — that is, inability to meet the current demands irrespective of whether the company is possessed of assets which, if realized, would enable it to discharge its liabilities in full. It was thus submitted that the fact that the winding-up petition was regular and was never challenged by the RM and the fact that the judgment debt remained unpaid would entitle the petitioner to file this petition ex debito justitiae.

In reply, the respondent argued that whilst accepting the principle that an unpaid creditor would normally be granted a winding-up order against a company, neither logic nor authorities allowed a mechanical application of the rule that ex debito justitiae, the petitioner had a right to seek a winding-up order. It was pointed out to me that both the opening words of ss 218 and 221 of the Act state that the court 'may' order the company to be wound up. The use of the word 'may' rather than 'must' vested the court with a discretion. The respondent referred me to a passage from the *Law of Company Liquidation* (3rd Ed) (Australia) at p 61 under the title 'Discretion to Refuse Order'. The passage reads:

> Indeed, it is now settled that the creditor's rights are always subject to the overriding discretion which is reposed in the court both by the introductory words of s 364 and by the permissively worded language of s 367(1), with the result that the court is never bound to make an order merely upon proof of a ground for winding up, but has a discretion to decide whether or not it will do so. Its power to refuse an order is, however, fairly strictly regulated and is exercised in accordance with principles which are relatively well defined. There are, in fact, certainly no more than five, and probably only four, reasons which will justify the court in refusing to make an order on the application of an unpaid creditor. These are that: (i) the applicant's debt

amounts to less than $1,000; (ii) the debt is bona fide disputed by the company; (iii) the company has paid or tendered payment of the applicant's debt; (iv) the winding up is opposed by other creditors; and (v) the company is in the process of being wound up voluntarily.

The respondent argued that the right to have a company wound up is a right which belongs not to the petitioner, but to all the class of unsecured creditors to which the petitioner belongs. I was urged to consider the opposition of the majority of creditors in the same class as the petitioning creditor. Evidence was shown that there were 32 creditors, who were also the house buyers of the project, who have filed notices of opposition to the winding up of the respondent. I was referred to *Re Crigglestone Coal Co Ltd* [1906] 2 Ch D 327 at pp 331–332, where Buckley J said:

> The right ex debito justitiae is not his individual right, but his representative right. If a majority of the class are opposed to his view, and consider that they have a better chance of getting payment by abstaining from seizing the assets, then, upon general grounds and upon s 91 of the Companies Act 1862, the court gives effect to such right as the majority of the class desire to exercise. This is no exception. It is a recognition of the right, but affirms that it is the right not of the individual, but of the class; that it is for the majority to seek or to decline the order as best serves the interest of their class. It is a matter upon which the majority of the unsecured creditors are entitled to prevail, but on which the debtor has no voice.

A further factor that I was urged to consider was that there was no benefit which could accrue to the petitioner should the respondent be wound up. Evidence showed that even after completion of the project, the proceeds would not be sufficient to pay all the money owing to the debenture holder. The petitioner would gain nothing other than the satisfaction of winding up the respondent as there were no assets available for the benefit of the unsecured creditors. I was referred to *Krextile Holdings Pty Ltd v Widdows* [1974] VR 689 where, in exercising its discretion, the court considered not only the interest of the creditors but also the public interest. It was thus urged upon me that abandoned housing projects such as the present case should be completed and delivered to the house buyers rather than abandoned totally because of a fruitless winding-up order.

I have considered the submissions of both parties in this respect and hold that the use of the permissive 'may' in ss 218 and 221 of the Act — rather than the mandatory 'must' — gives the court a discretion whether or not to wind up the company. However, notwithstanding the fact that an unpaid creditor of a company is entitled to a winding-up order ex debito justitiae, I hold that that rule is subject to exceptions. These are where:

(i) the petitioner's debt amounts to less than RM500;

(ii) the debt is bona fide disputed by the respondent;

(iii) the respondent has paid or tendered payment of the petitioner's debt;

(iv) the winding up is opposed by other creditors; and

(v) the respondent is in the process of being wound up voluntarily.

In the present case, it was evident that the winding up was opposed by other creditors. Although the petitioner may have a prima facie right to an order to wind up, this is a right that belongs to the class of creditors of whom he is one. The court must take into account both the numbers of opposing creditors as opposed to the supporting creditors and also the majority in value. However, it must be noted that the wishes of the creditors alone will not decide the winding up or otherwise of the company. The court, being invested with a wide discretion, will look into all aspects including the commercial viability of allowing the company to continue to function. In this case, 32 creditors who were also the house buyers have opposed this petition. The company has no other assets. Nothing can be gained by granting the order, whereas one final chance ought to be given to the RM to fulfill their obligations. I can do no better than repeat the words of Buckley J in *Re Crigglestone* at p 332:

> The company will often put forward, as it if were matter of defence, that there are no assets to wind up. It is not a matter of defence at all. The court has often refused an order upon that ground, but not because it lies in the debtor's mouth to say that he is not amenable to the jurisdiction because he has no property, but because the court does not make an order when no benefit can result. If the order will be useful (not necessarily fruitful) there is jurisdiction to make it.

I would also accept the principle enunciated in *Krextile Holdings*. Not only should the court consider the interest of the creditors, the court should also consider the interest of the public at large.

Recovering an abandoned housing project is akin to injecting life into the community in that area. Out of that one project much benefit could accrue to the community. Schools will emerge, public utilities will be provided and the general upliftment of life will no doubt bring harmony and contentment, thus nurturing a satisfied society. If another opportunity can be given to the RM to revive this abandoned project, so be it.

The receivers' breach of undertaking

It was submitted that the RM had failed to complete the project within the 21-month period as promised. It was pointed out that 3½ years later, the RM again undertook to complete the project by June 1995. Again, they had failed to do so. In fact, on 11 April 1995, Abdul Malek Ahmad J (as he then was) heard in effect the merits of the petition when the respondent applied for a stay of the petition before the learned judge till June 1995. The learned judge acceded to the plea and on 23 May 1995 had stayed the petition for seven months till 22 December 1995 to enable the RM to complete their task. Again, the RM failed to complete the project. Thus the petition came up for hearing before me.

The petitioner argued that the RM had breached their undertaking to complete the project by 22 December 1995, which was the basis on which the seven-month stay was granted by the learned judge. The petitioner referred me to the judgment of Siti Norma Yaakob J (as she then was) in *Kim Wah Theatre Sdn Bhd v Fahlum Developer Sdn Bhd* [1990] 1 MSCLC 90, 672 wherein her Ladyship had this to say on the question of a breach of an undertaking given in relation to winding-up proceedings:

At this stage of the proceedings, I consider that the only relevant issue to be determined is whether there has been a breach of the undertaking given by the respondent and to that end, other extraneous circumstances that may have contributed to such a breach are irrelevant. A

There can be no doubt at all that the respondent had breached their undertaking and much as I sympathize with the fate of the 957 purchasers, there is nothing the court can do to alleviate their position. On that conclusion, I had ordered that the respondent be wound up, the official receiver be appointed as provisional liquidator and that the costs of these proceedings be paid out of the assets of the respondent. B

It was therefore submitted before me that since the RM had breached their undertaking three times, any further stay would be an abuse of the process of court. I was referred to encl 67 of the RM, which was to move the court to either dismiss the petition or stay the petition until certain related arbitration proceedings had been concluded — that is, the arbitration proceedings between the respondent and one Lian Construction and Engineering Sdn Bhd and another matter between the defendant and Juru Ukur Bahan Consultant, the quantity surveyors. C D

The petitioner argued that encl 67 which contained a plea for a stay was a tactical move by the RM at the expense of the house buyers to prolong and delay the winding-up order until such time when the profits earned were sufficient to discharge the company's liabilities for the principal and interest on the debenture. It was their further fear that the upliftment of the receivership upon full realization on the debenture would leave the petitioner and other unsecured judgment creditors with only the 'shell' of the respondent. It was further submitted that the incompetence of the RM in handling the project had even caused some house purchasers themselves to file a notice of intention to appear to support their petition. The petitioner argued that a more competent liquidator ought to be appointed by this court to substitute the present RM because of their failed tasks. E F

In reply, the respondent contended that there was no undertaking given by the RM at any time to complete the project within any given time. Paragraph 8(c) of encl 9 — which has been referred to earlier and which the petitioner contended was the alleged undertaking — could not be deemed as such. The respondent argued that at each stage of the proceedings, it had dutifully kept the court informed by affidavit the progress of the project. The respondent also referred to *Kim Wah Theatre* which was a case similar to the case before me. In *Kim Wah Theatre Sdn Bhd v Fahlum Developer Sdn Bhd* [1990] 2 MLJ 511 at the hearing of the petition, the opposing creditors sought a stay of the petition for a period of 10 months to enable the respondent to complete constructing the flats in Phase VI of the project so that they could fulfill their obligations to the purchasers of the uncompleted flats and the process would settle all outstanding sums due to all their creditors including the petitioner. The court agreed and added that no special circumstances had been shown by the petitioner to warrant the winding up being made in its favour. However, *Kim Wah Theatre Sdn Bhd v Fahlum Developer Sdn Bhd* [1990] 1 MSCLC 90, 672 — cited by the petitioner — refers to the subsequent hearing of the G H I

petition, wherein the learned judge ordered the winding up of the respondent for the breach of its undertaking given to complete Phase IV in 10 months.

The respondent sought to distinguish *Kim Wah Theatre*'s case from the instant case by arguing that there was no undertaking provided by the RM in the instant case to complete the project within a specified time period and that in *Kim Wah Theatre*'s case it was the respondent who sought to complete the project; whereas in the instant case, it was the RM who were seeking to complete the project. In the present case, it was submitted that affidavit evidence showed that, notwithstanding all the delays, the project was now nearly completed and in its final stages and that no purpose would be served in winding up the company. With regard to the allegations by the petitioner of tactical moves planned by the respondent to prolong or delay the winding up until such time when the profits earned were sufficient to discharge the company's liabilities for the principal and interest on the debenture, it was submitted that the same were unsubstantiated.

In weighing the arguments of both parties on this issue, I find that encl 9 — which was affirmed by a partner of the RM — clearly stated in para 1 of the affidavit that the deponent, being a partner of the RM and having conduct of the receivership of the respondent, was duly authorized to affirm the affidavit. In the circumstances, the respondent's directors could not affirm an affidavit without the consent of the RM. But in this case, a partner of the RM had himself affirmed the affidavit. On this score, I find that para 8(c) of the affidavit was a clear undertaking given by the RM to complete the project within the 21-month period. Not only did the RM breach the undertaking once but I find that they did so on two other occasions. As to whether there were indeed two other breaches of the undertaking or not that is immaterial. But even if there were in fact three broken promises, these lent weight to the attempt by the RM to try and complete the project in spite of delays. In any event, since the project is nearing completion and is in its final stages the RM should be given one final attempt to complete the project, failing which the winding-up order ought to be made as was decided by the court in *Kim Wah Theatre*'s case. As to whether the project is to be completed by the respondent as in *Kim Wah Theatre*'s case or the RM as in this case made no difference. The final result ought to be the same, that is, the satisfactory completion of the project. As to the allegations of tactical moves on the part of the respondent to prolong or delay the winding up, I find that such allegations are baseless and made purely on suspicion.

The unsecured creditor's rights

The petitioner further contended that if the insolvent respondent were not wound up, the unsecured judgment creditors would have no control over the manner in which the respondent was run and the petitioner would have no right of access to any balance sheet or information pertaining to the respondent's accounts. It was further submitted that the RM had also failed to comply with s 190 of the Act in that they had failed to lodge with the registrar a detailed account of the respondent within one month after

the expiration of the period of six months from the date of his appointment. Further, it was pointed out that the unsecured creditors — despite having statutory right to enforce their judgment — had been queuing in the dark for almost five years (since the petition was filed in 1991). It was submitted that I should attach more importance to the pleas of the unsecured creditors for the obvious reason that unlike secured creditors, they have no means other than the winding-up proceedings by which they can obtain payment of their debts. For all these reasons, it was urged upon me to wind up the respondent and to appoint an official liquidator.

In reply, the respondent argued that the RM had to file statements biannually at the Registry of Companies under s 190 of the Act. If the petitioner was actually interested in the financial status of the respondent, it could do a search at the company registry and see the statements. It was argued that the petitioner would only be entitled to take this argument if, having done a search at the company registry, it found no or insufficient statement.

In any event, in the submission of the respondent, the solicitors confirmed that they were authorized by the respondent to state that they were prepared to give the petitioner reasonable access to the books of the respondent. It was even suggested that if the court were inclined to stay the petition, then the court could make an order that the petitioner be entitled to have reasonable access to the balance sheets and books of the respondents, subject to the petitioner paying the expenses of, and incidental to, such access.

In respect of the petitioner's submission regarding the right of the unsecured creditors, the respondent argued that the majority of the unsecured creditors were opposed to the winding up. It was also urged upon me that since there were no assets which could possibly satisfy any part of the petitioner's debt, there was no reason for the court to make an order for winding up when no benefit could accrue as a result of such an order.

I have looked carefully into the submissions of both counsel in respect of this issue. The court, when making its decision, will have to consider the competing rights of the parties and whether there will be any prejudice to the petitioner if the petition is stayed. I have to take note of the fact that the petitioner has not suggested that if the respondent were wound up, it would make some recovery. However, it is apparent to me that if an order to wind up were made, not only the debenture holder but also the house buyers would be prejudiced. In encl 67 — which is an affidavit affirmed as late as 5 January 1996 — a partner of the RM, Chew Hoy Ping, has set out the work that has so far been done by the RM. It is clear from exh A-1 to encl 67 that vacant possession of the properties in Phase III was given between January and February 1996. Thereafter, the only remaining matters to be attended to are:

(i) the collection of the balance purchase price held by stakeholders under the standard developer's contract;

(ii) the respondent's obligations under the defects liability period;

(iii) the obtaining of strata titles in the case of the flats and subdivided title in the case of the landed properties;

(iv) the obtaining of permanent certificates of fitness;

(v) the various claims pending against the contractors and consultants; and

(vi) some vacant land to be sold.

If the winding-up order is made, then the house buyers will have to look to the official receiver — and not to the RM — to perform the obligations under the sale and purchase agreement. This means that it would be the official receiver who would have to subdivide titles in the case of the landed properties and obtain strata titles in the case of the apartments, obtain permanent certificates of fitness and attend to any defects that appear within the defects liability period. I do not envisage that the official receiver ought to be burdened with such mundane matters. He neither has the time nor the facilities, nor the manpower, to do such work. Besides, there are no assets available for him to utilize the resources. It would be against public policy if the ordinary house buyers, having paid the entire purchase price, were to be effectively deprived of their rights under the sale and purchase agreement. I also hold that the allegations of incompetence on the part of the RM so that the liquidators could be appointed are baseless and devoid of merit.

The functions and duties of the RM are similar to that of a liquidator appointed under an order for winding up. Section 182(1)(d) of the Act specifically requires that all receivers and managers must be approved to also act as liquidators. In my view, the appointment of a liquidator would only amount to duplicity resulting in higher cost.

As for the rights of the unsecured creditors, it has not been denied by the petitioners that the majority of the unsecured creditors were opposed to the winding up. The court has to accede to the wishes of the majority. In respect of the lack of probity regarding the accounts and the balance sheets, a direct challenge had been taken by the respondent that the petitioner had not made a search at the Registry of Companies and that if indeed it had done so, there would have been no reason to have made such allegations. In any event, I find that if such is the allegation of the petitioner, surely it could have exhibited a letter from the Registrar of Companies to the effect that the RM of the respondent had not filed the statutory accounts. Notwithstanding all this, the respondent through the RM is ready, willing and able to open its books for inspection, no doubt at the petitioner's expense which, to my mind, is a reasonable request. The petitioner never indicated an intention to take up this offer.

In the circumstances, having taken into consideration all the issues and related matters, I ordered the petition be stayed for a period of one year from the date hereof and that if the RM are unable to complete the project by 13 April 1997 then on that day, the respondent is deemed to be wound up. I also made no order as to costs.

Order accordingly.

Reported by Tey Tsun Hang